

Overview

Governor Parson signed HB 557 (2021) into law on July 14, 2021. HB 557 has an emergency clause which makes the requirements of the new law effective immediately upon passage and approval.

HB 557 has three components:

- It provides new tools to law enforcement and the Children's Division to conduct investigations of reports of child abuse and neglect involving residential care facilities.
- It requires certain employees, staff, volunteers, managers, contractors and owners of licensed residential care facilities (LRCFs), license-exempt residential care facilities (LERCFs) and child placing agencies (CPAs) to successfully complete a fingerprint-based criminal and civil background check and be found eligible for employment or presence at the facility.
- It requires LERCFs providing services to children to notify the Department of Social Services that they are operating in Missouri.

Implementation of HB 557 will require DSS to promulgate a combination of new and amended regulations to implement all three components of the bill. The bill specifically authorizes DSS to promulgate regulations, including emergency regulations to implement the new background check and notification requirements.¹

Description of Regulations

This brief overview provides highlights of the draft emergency regulations which DSS proposes to publish at this time and does not cover every detail of each regulation. To more easily understand the regulations as a whole, DSS begins the overview with the two, new regulations: the Background Check Regulation (13 CSR 35-71.015) and the Notification Regulation (13 CSR 35-71.300). The new Notification Regulation and all of the amended regulations in Chapter 71 and 73 refer back to the Background Check regulation.

13 CSR 35-71.015 Background Check Regulation - NEW

This regulation is the foundation of the regulation packet. It implements the new background check requirements in §210.493 RSMo. It includes a definitions section which will define words and phrases which will be applicable to the entire chapters 71 and 73 (see below). It defines and clarifies the scope of what types of agencies are

¹ §§ 210.493.14 and 210.1286 RSMo.

subject to the background check and notification requirements. It establishes the process for applying for applying for and conducting background checks and DSS' decision on whether an individual is eligible for employment or presence at a facility. It establishes a process for any individual or entity to request administrative review and appeal of an adverse decision.

13 CSR 35-71.300 Notification Regulation - NEW

The Notification Regulation establishes the procedures for LERCFs to comply with HB 557's requirement that they notify DSS of its operations in the Missouri. Again, all LERCFs are now required by state law to complete the notification process by October 12, 2021. The regulation describes the list of LERCFs operating in Missouri that DSS is required to keep and make available to the public upon request. It also establishes a process for LERCFs to seek administrative reviews of DSS's decisions made pursuant to the regulation.

Amendments to Chapter 71 – Regulations Governing Licensed Residential Care Facilities – AMENDMENTS TO EXISTING REGULATIONS.

Division 35, Chapter 71 of Title 13 of the Code of State Regulations are the regulations which govern the licensure of residential care facilities which provide services for children in Missouri. DSS is proposing to amend the following regulations at this time:

- **13 CSR 35-71.010 – *General Principles and Definitions*.** This regulation establishes the overarching, general principles governing the implementation of all of the regulations in Chapter 71. It also contains the definitions of the words and phrases used in the chapter. The regulation also incorporates by reference the definitions applicable to Background checks.
- **13 CSR 35-71.020 – *Application for Licensure as a Residential Care Facility*.** This regulation establishes the procedures for applying for licensure as a LRCF. This regulation is being amended to incorporate the new background check and notification requirements of HB 557 and 13 CSR 35-71.015. The amendment establishes a process for submitting applications for licensure on line. It also incorporates by reference all of the updated forms that are required to be completed for licensure and relicensure.
- **13 CSR 35-71.030 – *Hearing and Administrative Review*.** This regulation establishes the procedures for LRCFs and applicants for a license to seek administrative review of adverse DSS' licensing

decisions. This regulation is updated to incorporate the new background check requirements, and to repeal references to background checks which are not consistent with §210.493 RSMo. It further adds language to ensure that DSS can take action where the LRCF fails to comply with fire, safety, health and sanitation inspections that are required by state law or local ordinance. This will ensure that this regulation is consistent with §§210.1268 and 210.1271 RSMo.

- **13 CSR 35-71.045 – *Personnel*** – This regulation governs the requirements for personnel of LRCFs. The regulation updates the use of words and phrases to be consistent with HB 557, the new Background Check Regulation, and the amendments to the Definitions regulation. The proposed amendment incorporates the requirements of the new Background Check regulation and repeals references to background checks which are inconsistent with §210.493 RSMo. However, the regulation makes it clear that LRCFs are still required to run annual background checks on personnel. The amended regulation makes it clear that any person who makes a materially false statement in connection with an application for licensure will be ineligible for employment or presence at the LRCF. Finally, DSS proposes to repeal and/or amend some language which is no longer consistent with current practice.

Amendments to Chapter 73 – Regulations Governing Child Placing Agencies – AMENDMENTS TO EXISTING REGULATIONS.

Division 35, Chapter 73 of Title 13 of the Code of State Regulations are the regulations which govern the licensure of Child Placing Agencies (CPAs) which operate in Missouri. Under Missouri law, CPAs are defined as “any person, other than the parents, who places a child outside the home of the child's parents or guardian, or advertises or holds himself forth as performing such services, but excluding the attorney, physician, or clergyman of the parents.” §210.481(2) RSMo CPAs must have a license to operate in Missouri. §210.516.1 RSMo. DSS is therefore proposing to amend the following regulations:

- **13 CSR 35-73.010 – *Definitions*** – This regulation establishes the definitions of words and phrases for Chapter 73. The amendment incorporates the same general principles as in Chapter 71. The amendment incorporates by reference the definitions of words and phrases in §210.110, 210.481, 210.1253 and Chapter 71 to ensure that all words and phrases are used consistently throughout CD’s regulatory structure. The Regulation is also specifically amended to define “Background

Check” as the background check required in §210.493 and as implemented in 13 CSR 35-71.015. This will ensure that there will only be one background check regulation for all impacted entities and that the processes and procedures will be the same.

- **13 CSR 35-73.012 – *Basis for Licensure and Licensing Procedures*.** This regulation is being amended to ensure that the procedures established in the regulation are consistent with current procedures. The regulation will incorporate by reference all of the latest application forms that applicants are required to utilize to apply for licensure and relicensure and will repeal outdated forms which are currently published in the *Code of State Regulations*. The regulation is amended to require applicants to comply with the Background Check requirements of HB 557.
- **13 CSR 35-73.017 – *Hearings and Judicial Review*.** This regulation establishes the process for Child Placing Agencies to request administrative review or appeal of adverse licensure decisions. It updates some now obsolete terms, and incorporates the procedures for Background Checks and eligibility determinations required in §210.493 RSMo and 13 CSR 35-71.015.
- **13 CSR 35-73.030 – *Personnel Practices and Personnel*.** This regulation governs the requirements for personnel and personnel policies for licensed Child Placing Agencies. The regulation is amended to incorporate the requirements of the Background Check and eligibility determinations of §210.493 RSMo. and 13 CSR 35-71.015.
- **13 CSR 35-73.035 – *Staff Qualifications and Requirements*.** This regulation establishes the requirements and qualifications for various categories of staff members and CPA personnel. DSS proposes to amend this regulation to incorporate the new Background Check and eligibility requirements of §210.493 and 13 CSR 35-71.015